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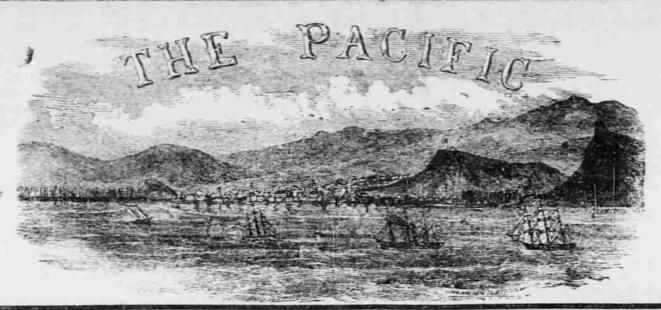
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VOL. XXVIII--NO. 24.

SUPREME COURT.

HONOLULU, HAWAIIAN ISLANDS, DECEMBER 8, 1883.

AT CHAMBERS, BEFORE AUSTIN J. R. Grieve and A. T. Atkinson, vs. Charles T. Gulick, Minister of the Interior. Mandamus. Petition for order to show cause why writ of

mandamus should not issue. To the Honorable Benjamin H. Austin, Justice of the Supreme Court.

The petition of Robert Grieve and Alatau T. Atkinson of Honolulu, Island of Oahu respectfully

That on or about the day of April. A. D.1883, the petitioners being possessed of certain propcrty, and being engaged together in a newspaper and general printing business in said Honolulu and being desirous of becoming incorporated under the laws of this Kingdom, filed in the office of the Minister of the Department of the Interior, a petition praying for a charter of incorporation to be issued to your petitioners concerning said property and business, and that your petitioners might be constituted a body corporate under the corporate name of Hawaiian Gazette Company, and also filed the several certificates as required by the statute thereto appertaining, together with a form

of the charter desired by your petitioners. That Charles T. Gulick, the defendant hereto is the Minister of the Department of the Interior. That by the statute regulating the granting of charters of incorporation, the Minister of the Department of the Interior is required to present

King in Privy Council. That by said statute the advice and consent of the King in Privy Council are equisite and essential to the issuing of said charter, and the same cannot be obtained by your petitioners until it has been presented to, and approved by the King in

Privy Council. petition as aforesaid, and that numerous meetings and now fails and refuses to present said petition

to the King in Privy Council. ful, and that by reason thereof your petitioners are | due form for the purpose of obtaining a charter, the | proudly informed the reporter while waitprevented from having action taken upon said petition and from obtaining a charter of incorporation are greatly prejudiced in their rights of property. remedy other than by the method hereby prayed officer of this Kingdom. In his opinion, the

of this Honorable Court do issue directed to the | a writ of prerogative in England, and never was in Honorable Court at a time and place therein to be of Ministerial office, but a following out of the specified, then and there to show cause why a writ | plain letter of the statutes is what is asked for by of mandamus shall not issue out of this Honorable | the plaintiffs and what formed a basis for presenting Court ordering the said defendant to present said this petition. The demurrer stated that there was | np a colored waiter at the counter and laid

> ALATAU T. ATKINSON, ROBERT GRIEVE.

. And now comes the defendant in the above entitled cause and demurring unto the plaintiffs petition, says that the matters and things therein set forth are insufficient in law for the plaintiff to Privy Council, if the Minister alone shall or shall maintain his cause, because

1. The petition does not show that a demand was made upon the defendant to do or perform the | above the law. The learned counsel here quoted act required of him. The petition does not show that the defendant refused a demand of the plain- Ministers to respond to persons aggrieved by their tiff to do or perform the act required of him. 2. That the Court has no jurisdiction of the subject matter of the defendant in this action. In that there is no law or statute of this realm as al-

leged in the petition as follows: "That by the Statute regulating the granting of Charters of Incorporation, the Minister of the Department of the Interior is required to present such petition for a Charter of Incorporation to the King in Privy Council but on the contrary, the only statute or law in regard to such matter is the

Section of the Civil Code 1,442, as follows: "The Minister of the Interior shall have full power, subject to the provisions and conditions of this chapter, in his discretion, by and with the consent of the King in Privy Council, to grant Charters of Incorporation for agricultural, commercial and manufacturing purposes, and for cemetery associations as well as to charter other incorporations either aggregate or sole, ecclesiastical or lay, banking and municipal corporations alone excepted, which shall be chartered only by the Legislature," and none others.

That the Court has no jurisdiction, because the subject matter of the petition is of executive cognizance resting in the judgment and discretion of executive officers in the discharge of their duty. Wherefore the defendant craves judgment and to be hence dismissed with his costs.

CHARLET T. GULICK, Minister of the Interior. W. Austin Whiting, | Of Counsel. Paul Neumann,

Messrs. Hartwell, Smith and Thurston appeared for the plaintiffs. Messrs. Paul Neumann and Austin Whiting for

appeared a demand had been made by private par- good. The fever was of an intermittent charac-HAWAIIAN CONSUL AND COMMISSION was therefore absolutely necessary that the demand be set forth in the petition but

[California II Room No. 4.]

[California II Room No. 4.] ties of another party to do a particular action. It | ter and contracted by the victims before they mand be set forth in the petition, but Several of the contracted parties speak the Enghe failed to find any demand. Did the pe- lish language well, having been to Queensland titioners seek to have the charter granted for from three to six years. They thoroughly undertheir own benefit or for the public benefit? He stand the nature of their contracts and also imersonal claims of theirs and of which they were to co-laborers. mitted to the Court that this question ought to be kind treatment they had received during the updecided before going into others, because if sus- | ward passage,

> main argument. Mr. Hartwell would prefer to meet the whole case rather than go into it by piecemeal.

the whole points of the case should be presented. Mr. Whiting proceeded. He pointed out some of the duties of the Minister of the Interior and amongst otherthings in his charge are matters relat- tended to the details of the allotment, and no ing to corporations. Corporations are creatures of doubt he accomplished his task in the usual masthe law. He then proceeded to dilate at length on the terly and satisfactory manner. powers invested in the Minister of the Interior by Section 1,442 of the Civil Code. The Legislature made that law and placed the power in the hands of the Minister of the Interior, therefore the Court

much as it prayed that the Court deprive the Minister of powers of discretion invested in him by law. He further argued that the Court had no jurisdiction to issue this mandamus. The learned counsel next cited numerous authorities showing the difference between Ministerial acts and acts which he was empowered to carry out by the discretionary power that was given him by the Statutes. If he (M. of Int.) concludes to grant a charter, he would have to submit it to the King in Privy Council to make it a valid Charter, but he has the discretion granted him by the Legislature, and it was only for the Legislature to change that pow-

A difference of opinion was, here expressed by Messrs. Hartwell and Neumann about order of procedure. The latter conceded to his learned friend what he, and the Court also, considered his right to reply to the plaintiff's argument, not feeling the least afraid that the de-

cision would be adverse in any case. Mr. Neumann, in supplementing the remarks of his learned brother, give a brief resume of the origin of a mandamus. He clearly pointed out. and produced numerous authorities in support of his argument, that there should be no encroachment by one department of the Government on the functions of the other. The Judiciary could not wipe out the powers and decide questions which were left to others. It was not to be supsuch petition for a charter of incorporation to the posed that where the Legislature refused to act, the Court would seek to compel it to do so by writ

The learned counsel thea pointed out at some length the two kinds of discretion that were invested in Executive officers: Absolute discretion, not trammelled by conditions or by law, and relative discretion. He quoted from the Civil Code where That more than sufficient time has elapsed | the words "shall, "may," "his duty to grant," wherein to enable the defendant to present said occur with regard to Ministerial duties. He cited numerous English authorities, which he considered of the Privy Council have been held since the filing | stronger than others from the fact that the people of said petition by your petitioners, but your peti- are more conservative and less radical than where tioners are informed and believe, and so aver, that he came from. He dwelt at length on the subject the said defendant has utterly failed and refused, of the Court interfering with the functions of Ministerial officers where their powers were discretion-

learned counsel for the defendant, were in favor of That your petitioners are without adequate the plaintiffs. It was a question affecting a high higher the officer, the more readily he ought to Wherefore your petitioners pray that the order | comply with the law. A mandamus was no longer said defendant ordering him to appear before this | the United States. It was not a question of rank to grant the charter, but it was necessary that there should be a statute to compel him to present the application to the King in Privy Council. He quoted from Section 34 of the Civil Code which called upon the Minister of the Interior to faithfully and impartially perform the duties of his office. He asked what was the use of the King in not decide what is to be presented to them for consideration. If so, it would place the Minister at length from the Constitution, which compelled what an officer shall do after he is set in motion. He maintained with considerable force that it was the valuable right of the public to obtain the valuable right of that executive body, the King in Privy Council. The public generally are interested in the actions of the Minister of the Interior. He dwelt on the nature of the demand that had been made, which was to be inferred by a refusal. He would not admit that the powers of the Minister were discretionary.

His Honor notified Counsel that he would not deliver judgment until his return from Lahaina, probably next week or the week after.

The Arrival of the Brig Hazard.

The brig Hazard arrived last Saturday morning from the New Hebrides, via Jaluit, 34 days. The Hazard left this port, under the command of Captain Tierney, on the 17th of April. She carried about twenty South Sea Islanders, whose term of contract had expired. These people were landed at their homes in Fakafoo, Tokalau, or Union group of islands. From thence proceeded to the New Hebrides, Solomon, and other islands, in quest of labor for the Planters' Labor and Supply Company, and under the direct supervision of Captain Tierney, who held a special commission the Southern Seas, Captain Tierney succeeded in by Hawaii, obtaining 128 adult laborers, 23 of whom were

During the voyage six deaths occurred on board the vessel, four of whom died from fever and two from the effects of eating poisoned fish. Mr. Whiting opened the case for the defendant, Beyond this, the health of the whole of the ship's and at the outset he presumed from the petition it company and passengers has been exceedingly

public officer it is absolutely necessary that the de- through Captain Tierney they expressed their wil- the building is opened. mand hould be alleged and proven and appear in linguess to enter into their contracts. On leaving the pleadings clearly and distinctly. In a case like | their recent home, the Hazard, they showed a prefthis, the demand must be a specific one. He sub- erence to remain on board, no doubt owing to the

tained by the Court, it would throw the bill out | At present they are comfortably housed at the entirely, without the necessity of going into the the immigration depot, and the allotment took place last Monday. According to a special arrangement or promise of Captain Tierney to the Islanders, each respective lot will be forwarded to Ferguson strongly urged State-aided emigration The Court ruled that it would be advisable that | the one destination, thereby avoiding any recrimi- to Australia. nations that might arise from the breaking up or separation of clans or families.

The Secretary of the Board of Immigration at-

The possibility of a war has caused a great drain of specie at Canton. Wealthy Chinese have withdrawn \$5,000,000 in the must abide by the law that gives discretion to the last three months from the Chinese banks Minister of the Interior to grant Charte.s, by and in Kwang Tung province, Chinese merwith the advice of the King in Privy Council, He cantile interests at Hongkong and Shanghai mentioned that the petition fell through, inas- are paralyzed.

FOREIGN NEWS,

Seabury, arrived late on Monday evening. at £20,000, part of which secred by insur-She brings dates to the 26th ultimo, and below will be found the latest news items:

London, November 15.-Nihilism in Russia has result in two more tragedies, both culminating at St. Petersburg to-day and hanged by the official executioner, the other died by her own hand, evidently in full er and make it in another form. He therefore view of the fact that death awaited her in failed to see how the Court could decide otherany case. The official victim was Sofiia Woskrepensky, a young lady student member of the Society of the Red Cross, one of the women arrested at the time the Imperial Marie Institute at Warsaw was discovered to have fallen into nihilistic control and sister of a leading revolutionist. The suicide was a woman named Ossinsky, who had, by vehement eloquence and reckless devotion to the principles of nihilism, made herself a leader among the terrorists of Little Russia and other southern provinces of

the empire. The Conservative students of St. Andrew's University have withdrawn the nomination of Mallock for rectorship and propose Edward Gibson, Member of Parliament for Dublin University as a candidate against United States Minister Lowell.

Edward Haulan, the champion oarsman of the world, arrived in San Francisco on 23rd November. He was met, upon his arrival at Port Costa, on the Southern Pacific Express, by J. C. Shelley, G. D. Griffin, George Lees, and Hamilton Dobbins-a committee sent up by the Rowing Association; and John Elder, James M. Camp, William Sansome, A. W. M'Kenzie, and William Langster, of the Canadian could be reasonably supposed to be the man who had "sat still in his boat on the That such failure and refusal on the part of the Mr. Hartwell made a lengthy address on behalf Thames, and laughed at England's greatest defendant hereto, to present their said petition to of the plaintiffs. He stated that papers having oarsman, while he waited for them to come the King in Privy Council as aforesaid, is unlaw- been presented to the Minister of the Interior in up to him," as the committee-men had question arose whether he could or could not be | ing for the train. Instead of such a man compelled to present them to the King in Privy as might popularly be supposed to be the and from becoming incorporated as aforesaid, and Council. He held that the cases cited by the one to earn such an enviable reputation, in answer to an inquiry, "Is Mr. Hanlan in this car?" a young, almost boyish-looking person, wearing a close-fitting skull cap, and a pleasant smile, arose from the side of a lady with whom he was talking, and announced that he was the person inquired

Sullivan, the pugilist, met his match in the Tremont House bar-room. He picked no statute to compel the Minister of the Interior | him on the floor, but in an attempt to have further fun with him he was himself thrown upon his shoulders on the tiles. The negro, when he stopped to realize what a feat he had accomplished, went out of the door like a flash.

> The P. M. S. S. Australia arrived from the Colonies early last Sunday morning. A few European telegrams that have not hitherto reached us are contained in the papers:

London, Nov. 8 .- At the Guildhall banquet, last evening (Lord Mayor's Day), M. Waddingactions. The Court can always set matters in | ton, the French Minister, who was present, said motion, but it was not for the Court to consider | that he had been charged with the mission of promoting the entente cordiale between France and England. He strenuously denied that his some thirty-nine days, but now, ander the Government were desirous of pursuing an agtween the two countries; and added that the same as heretofore, but the time for the French Government has made satisfactory rep- sailing of the boats has been altered from aration for the treatment to which the Rev. Mr. two o'clock P. M. to noon. Up to the his speech Mr. Gladstone referred to the pres- commendable promptitude, the due date that the Powers were unanimous in desiring the often the company have succeeded in getpreservation of peace.

Frozen beef and mutton has realized 51/ed to

61/d per pound, on the London market. Mr. W. J. Hunt, ex-Chief Secretary and Minister of Lands of Samoa, has written to the Times, advocating that England, Germany, France, and the United States should guarantee an independence to Samoa, Tonga, and other as agent of the Hawaiian Board of Immigration in | Pacific Islands, similar to that which is enjoyed

A telegram dated Nov. 16th, states that the French and German Press are engaged in renewed bickerings, the latter assuming a menacing and aggressive tone.

M. DeLesseps was entertained to a public banquet in Liverpool on the 15th November, In his speech in reply to the toast of his health, M. De Lesseps expressed himself most hopeful of a settlement being arrived at for the construction of a second canal through the Isthmus

The Victorian and New South Wales Commislooked upon the application of the plaintiffs' to be parted a proper knowledge of the same to their sioners for the approaching International Exhihave the immediate benefit. In some cases a de- On Saturday they were brought up before a The colonial courts are progressing very favoramand was not necessary, but in a case against a proper officer to take acknowledgments and bly, and will, it is expected, be complete when The Paris Press are personally satirical in

> their remarks concerning the Marquis Tseng. The Marquis Tseng states that France will require a force of upwards of 40,000 troops to overcome the Chinese, Annamese, and Tonquinese At a public meeting, held in London, Major

Marshal Serrana has accepted the Spanish Embassy to Paris.

Mr. Healy, M. P., speaking at Limerick, insisted on the abolition of landlordism. Cricket matches have been arranged by Kent and Derby against the Australian eleven.

An extensive and disastrous conflagration occurred in Sydney on the 10th Nov. The fire commenced in the Chinese quarter, Lower George street, and spread rapidly among the buildings, and destroyed two Chinese warehouses and premises occupied by Dynon & Co.,

crockery warehousemen, and Mitchell, Francis & Co., shipchandlers. The coffee palace was The P. M. S. S. City of Sydney, Captain | also much damaged. The total loss is estimated

The Liverpool Cup was run on 8th Nevember and won by Lord Ellesmere's Boswell ; Tonans second and Springlock third.

Keene, the American turf man, gave Carrison each having woman for a victim. One was | the Brighton Beach jockey, who rode his horse Bolero in the Handicap on Thursday, 20th September, £300. Walton, the American "plunger," took to a

> heavy amount the long odds offered against his mare Girofle, for the Cesarewitch and Camoridgeshire Stakes. He made a clean sweep of the bookmakers' "ring" at Newmarket. Weiss beat Byrne for the billiard championship of Australia and £400 by 298 points in 1,000. The present champion is only 22 years f age, and is a promising player, showing great

oolness and generalship all through the match.

The loser plays with a lot of dash and side, but

the winner is remarkable for the cleanness of

his stroke and the careful handling of his cue,

His largest break was 88. The S. S. Bell Rock in San Francisco.

The British steamer Bell Rock arrived in San Francisco on the 19th Nov., and for some reason the master did no treat the Custom-house authorities respectfully. On Inspector Hunt boarding the vessel the Captain refused to recognize his authority ROBT LEWERS. and ordered him off the vessel. Munt could not get a copy of the manifest for the purpose of certifying to it and the result is that the master was not permitted to enter at the Custom-house the following day and by his actions of the previous evening, he laid himself liable to a heavy fine for violation of the San Francisco navigation laws. Association. They looked for a man who | Meanwhile his cargo (considerable of which is bananas) is sealed up under hatches and cannot be delivered until a settlement is effected.

On the following day the Collector of Customs imposed a fine of \$500 on Captain Dumbreck, the principal reason being stated his refusal to produce his manifest for inspection when so ordered by Inspector

The New Mail Service.

With the departure of the steamship City

of New York from Auckland for San Francisco on Wednesday, the 7th November, terminated the old mail contract, and with the steamer to leave Auckland on December 11 will commence the new and faster service. Up to the present time the service has been carried out by four steamers, but under the new arrangement the contractors have the option of running the service with only three boats if they so desire. The Pacific Mail Company have decided upon the latter course, knocking out the City of New York until about March next, when she will, it is anticipated, resume the running, to enable the company to lay up the City of Sydney, for repairs, etc. The boats that will be employed therefore to do the faster service will be the Zealandia, Australia, and City of Sydney, and from the exhibitions these three vessels have already given us of their speed, there is little doubt of their ability to keep up the new service to DRUGGISTS & TOBACCONISTS! time-table dates. Hitherto the time occupied or contracted for to do the service was new contract, this time has to be shortened gressive colonial policy, or of making war for by two days-that is, the mails are to be the acquisition of territory in any part of the landed at Auckland within thirty-seven world. Mr. Gladstone, in the course of his days from London, or at Sydney within speech, warmly sympathized with France in the | forty-two days. The day of arrival of the Madagascar incident (sic) and confirmed M. steamers at Auckland from San Francisco Waddington's declaration that nothing had oc- will be each fourth Saturday, instead of curred to mar the cordiality of the relations be- Monday. The day of departure will be the Shaw had been subjected without solicitation | present time the service has been carried by the English Government, In the course of out by the Pacific Mail Company with most ent aspect of Continental politics, and declared | being very rarely exceeded; in fact, more ting their vessels into port two or even three days shead of that time, so that, as we have already said, we think there is little fear but that the present vessels will be able to maintain the service to the satisfaction of the public.-Auckland Weekly

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